

Commonwealth Edison Co.
Comments on ORMD's Second Draft of
RES Consumer Protection Rules
October 19, 2009

ComEd appreciates the opportunity to offer additional comments on the draft first notice rule ("DFNR") prepared by the Office of Retail Market Development ("ORMD"). The revisions made to the previous (first) draft are important and material and reflect significant effort by ORMD and Staff counsel. These revisions, coupled with the workshop discussions on September 30 and October 1, 2009, added clarity to the intent of the draft rule and allow ComEd to offer more insightful comments to the details of the document.

In addition to the comments embedded in the redline edits to the DFNR (shown in bold font in attached), ComEd offers the following comments, which are broken out between substantive and editorial:

Substantive:

- The provisions of §412.20 authorize a waiver to be granted for requirements of Part 412 that are "not statutorily mandated." It does not seem appropriate to include, up front, items within the rule that are legally unsupported. A better approach would be to include clear legal references, as noted in the recent workshop discussions (referenced above), than to leave this open to the briefs and subsequent legal challenges. Further, as indicated in ComEd's comments of September 25, 2009, it is critical that the ORMD workshop process be used to identify any legal concerns in order for such issues to be addressed in the appropriate forum.
- The procedures outlined that reflect timing of operations must be fully reviewed. For example, in Section 412.240 (a)(5), the requirements for a RES to provide notice to customers for renewal by "a specified date" is unclear as to the intent of this date. Is it the proposed date for the contract renewal, the date for an enrollment with another RES, or the last date to drop RES supply altogether? These items should be carefully planned so that all parties are clear in their responsibilities and the effects on the other parties involved, especially customers.
- The Training of Sales Agents under §412.160 is vague, requiring only that agents be "knowledgeable," and contains no actual training requirement. It may be useful to align this section and §412.310 with the requirements of §452.330 of the Commission's IDC rule to require RESs to provide an education plan and materials to the CSD in order to provide insight into how RES agents are being educated and to provide a modicum of oversight.

- Sections 412.110 through 412.150 appear duplicative in nature. These could be revised to provide more direct insight to overall marketing requirements, with the subparts breaking out the exceptions for the different flavors of marketing. For example, the requirements to provide hardcopies of their contracts on request or Uniform Disclosure is universal, and should be treated as such, while any requirements to have a third party telephonic verification would only be provided in a telemarketing subpart.

Editorial:

- There continue to be terms within the document that require definitions to allow a single understanding of the use of the terms and to allow the document to clearly reflect the rules rather than describing terms. A more complete list is provided in the redline edits to the DFNR, but a few of the most important include: the “Do Not Market List” - both the utility provided and the RES list, “Rescinds” – to clarify the purpose, and the “Uniform Disclosure” – which is used many times but is not treated consistently.
- The services and products provided by RESs, that is power and energy supply services, are also not treated in a clear and consistent manner. In certain cases these are described as “services” and in others they are “products”, and others are a combination of descriptions.